

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

UNITED STATES OF AMERICA, §
§
Plaintiff, §
§
v. § CASE NO. 7:20-CV-395
§
0.532 ACRES OF LAND, MORE OR LESS, §
SITUATE IN STARR COUNTY, §
STATE OF TEXAS; AND MARCOS §
MUNIZ JR, *et al.*, §
§
Defendants. §

**OPPOSED MOTION FOR A CONTINUANCE OF THE JOINT DISCOVERY/CASE
MANAGEMENT PLAN AND THE INITIAL PRETRIAL AND SCHEDULING
CONFERENCE PURSUANT TO FED. R. CIV. P. 26(f)**

Assistant United States Attorney, Alexander N. DerGarabedian, on behalf of the United States of America, respectfully moves for a continuance of the filing of a Joint Discovery/Case Management Plan and the initial pretrial and scheduling conference scheduled for February 16, 2021.

BACKGROUND

1. The United States commenced this case on December 4, 2020 by filing the Declaration of Taking, which sought to acquire fee simple interest in tracts identified as RGV-RGC-5073.¹
2. On January 22, 2021, the United States deposited \$7,600 in the registry of the Court as estimated just compensation. Upon deposit of the estimated just compensation, title to the

¹ Dkt. No. 2.

tracts identified as - RGV-RGC-5073 vested in the name of the United States by operation of law.²

Since filing this case, the United States has received 19 waivers of service, 19 disclaimers, and personally served 10 individuals. Of the 19 individuals who have signed disclaimers, 3 have been dismissed: Aide P. Pena, Adriana P. Garza, and Librado D. Perez.³ The United States continues to effectuate service either through personal service or publication on 46 defendants.

REQUEST FOR RELIEF

The United States requests that the Court continue the filing of the Joint Discovery/Case Management Plan and the initial pretrial and scheduling conference as it will not prejudice any party of this case. Rather, the United States believes the continuance sought herein will preserve judicial and party resources based on the following reasons:

1. This is a federal land condemnation action seeking to acquire property in order “to construct, install, operate, and maintain roads, fencing, vehicle barriers, security lighting, cameras, sensors, and related structures designed to help secure the United States/Mexico border within the State of Texas.”⁴
2. On January 20, 2021, President Joseph R. Biden, Jr. issued a Presidential Proclamation, terminating the national emergency at the Southern Border Wall and directing “a careful review of all resources appropriated or redirected to construct a southern border

² Upon the filing of the Declaration of Taking and depositing the estimated compensation in the Registry of the Court, the following events occur by operation of law: “(1) title to the estate or interest specified in the declaration vests in the Government; (2) the land is condemned and taken for the use of the Government; and (3) the right to just compensation for the land vests in the persons entitled to the compensation.” 40 U.S.C. § 3114(b); see *E. Tennessee Nat. Gas. Co. v. Sage*, 361 F.3d 808, 825 (4th Cir. 2004) (in a Declaration of Taking Act case, “[t]itle and the right to possession vest in the government immediately upon the filing of a declaration and the requisite deposit.”).

³ Dkt Nos. 17, 18, and 41.

⁴ Dkt. No. 2, Schedule B.

- “wall” through the development of “a plan for the redirection of funds concerning the southern border wall.”⁵
3. The plan for the redirection of funds concerning the southern border wall is expected to be developed within 60 days from the date of the proclamation.⁶
 4. No action other than service of process/notice will continue at this time until the position of the United States is determined.
 5. The United States will continue to diligently serve all named Defendants pursuant to Rules 4 and 71.1 of the Federal Rules of Civil Procedure.

Based on the foregoing, the United States requests that the Court grant this motion and enter an order continuing the filing of the Joint Discovery/Case Management Plan and the initial pretrial and scheduling conference for at least 60 days.

CERTIFICATE OF CONFERENCE

Between January 7, 2021 and January 29, 20201, the undersigned counsel and Assistant United States Attorney J. Parker Gochenour contacted: Salvador Perez, Aida Marie Perez, Roman Ruben Perez, Samuel Perez, Michaela Perez, Alberto Alaniz, Felipa Alaniz, Estrella Casas, Alicia Moreno, Juanita Perez Guerra, Rosalina Perez Garcia, Myra Trinidad Barrera, Merlinda Hinojosa, and Richard Ochoa, who have thus far been communicating with the United States and are unopposed to a continuance. The remaining parties remain unserved and as such they are deemed opposed. The United States has also been unsuccessful in contacting: Aaron Barron, Daniel Barrera, Jose Alaniz, Jr., Davy Trevino, Andrew Alaniz, Artemio Baldemar Perez, Benito Perez, Candelaria Perez Ruiz, Solia P. Ramos, Miguel Perez, Benito Perez, Christian Abraham Perez,

⁵ Proclamation No. 10142, 86 Fed. Reg. 7225 (Jan. 27, 2021).

⁶ *Id.*

Delfina Lopez, Juanita Rivas, and Maria Inez Perez Lopez. Alberto Alaniz, Pablo Perez, III, Patricia Barerra Rocha are also all deceased.

Respectfully submitted,

RYAN K. PATRICK
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Southern District of Texas

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CERTIFICATE OF SERVICE

I, Alexander N. DerGarabedian, Assistant United States Attorney for the Southern District of Texas, hereby certify that on this 3rd day of February 2021, a copy of the foregoing was served on all parties in accordance with the Federal Rules of Civil Procedure.

s/J Alexander N. DerGarabedian
ALEXANDER N. DERGARABEDIAN
Assistant United States Attorney